



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,820	07/23/2003	Jonathan Maynes	CEN0017-01	7804

7590
Richard B. Taylor
James L. Cordek
Solae, LLC
P.O. Box 88940
St. Louis, MO 63188

EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
----------	--------------

1794

MAIL DATE	DELIVERY MODE
-----------	---------------

07/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/625,820	Applicant(s) MAYNES, JONATHAN	
	Examiner Carolyn A. Paden	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,8,10,12-18 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,8,10,13,15-18 and 20-22 is/are rejected.
- 7) ☒ Claim(s) 12 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 8, 10, 13, 15-18, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Umeda (5,833,858) as further evidenced by Merck Index for reasons of record alone or if necessary in view of Strauss.

Umeda discloses defatted soybean lecithin in Table 2, which has the phosphatidylcholine (PC) of the claims. Although the acetone soluble content is not mentioned, this value is a well-known property of lecithin, as evidenced by the Merck Index. Thus one of ordinary skill in the art would expect that the defatted lecithin of Table 2 would also have the acetone insoluble content of the claims due to the high content of lecithin phospholipids.

Applicant has amended the claims to show a specific process by which the product is made. The results of Table 2 are from the process of comparative example 4. In this example the product is made by treating defatted soybean lecithin with 75% ethanol, which contains 25% water.

More than one extraction is used in the process. One of ordinary skill in the art would expect the ratio of alcohol to water in Umeda to fall within the range of the claims.

The lecithin ingredients are shown in Tables 2 & 3 and appear to fall within the range set forth in claim 8. It is appreciated that the specific percentages of each phospholipid is not identical to the claims, it is the examiners position that the difference between the values shown in the claims and values in Umeda are obvious differences that depend upon the extent fat or water remaining in the lecithin composition. The use of weight ratios of ethanol to water of 5:4 appears to be shown in comparative example 3.

It is appreciated that centrifuging, drying and mixing are not mentioned in Umeda but one of ordinary skill in the art would have been aware that centrifuging and drying are known in the art to facilitate the preparation of dried lecithin compositions. If further evidence were needed to the use of these process steps, one would only need to look to Stauss at example 1, wherein the lecithin composition is extracted, centrifuged and dried.

Claims 4 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Umeda as further evidenced by Merck Index as applied to claims 1, 2, 8, 10, 13, 15-18, 21 & 22 above, and further in view of Losch for reasons of record.

The claims appear to differ from Umeda in the recitation that the lecithin is in a granulated form. Losch is relied upon to show that phospholipids are easily formulated into a granulated state. It would have been obvious to formulate the phospholipid composition of Umeda into the granulated form of Losch in order to provide for a storage stable phospholipid composition.

Claim 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 appears to fall outside the range of claim 8.

Claims 12 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794

Application/Control Number: 10/625,820
Art Unit: 1794

Page 6

.